

## EXHIBIT A



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## State AG sues poultry firms

BRIAN BARBER World Staff Writer

06/14/2005

Tulsa World (Final Home Edition), Page A1 of TopStoryP1, News

Oklahoma Attorney General Drew Edmondson filed his long-threatened federal lawsuit Monday against 14 poultry companies accused of polluting the state's waters with chicken litter.

"We cannot allow our waterways to continue to be used as a dump for the poultry industry," Edmondson said.

The complaint, made in Tulsa's U.S. District Court of the Northern District of Oklahoma, alleges violations of the federal Comprehensive Environmental Response Compensation and Liability Act, state and federal nuisance laws, trespass and state environmental and agriculture codes.

It focuses on pollution in the Illinois River watershed, claiming that the lakes, streams and the drinking water are tainted with runoff from phosphorus-rich chicken litter that is applied to the land as fertilizer.

The suit seeks an unspecified amount of compensation to clean up the pollution, along with punitive damages and legal costs.

If the case goes to trial, Edmondson said, he would make a presentation to the court about what he believes is a fair amount, but would not reveal the figure to the media.

"It's big," he said.

Despite the filing of the lawsuit, Edmondson said, he hopes talks with the poultry industry will continue and has held off on the issuance of summons.

"It is in their interest more than mine to mediate and negotiate," he said. "An outcome in court could be disastrous to one or more of the companies, and I think we're going to win."

A spokeswoman for the companies, Janet Wilkerson, said they are eager to continue the talks.

"We continue to hold out hope that we can avoid wasteful litigation, which I think everyone agrees is certainly not the most efficient way to address the issues before us in a way that preserves water quality, our industry and the related 12,000 Oklahoma jobs," she said.

Poultry farmers have followed all regulations on chicken litter, Wilkerson said.

"While we're doing everything humanly possible to avoid going to court, our attorneys tell us that when the facts come out and the court applies the law, the poultry industry's position will be proven correct."

Marla Peek, Oklahoma Farm Bureau director of regulatory affairs, said she was disappointed by the lawsuit.

"This is an attack on agriculture in Oklahoma," she said, noting that Edmondson is trying to make a name for himself with the case.

The state began talks with the industry in 2001, and had its latest mediation round last week. Both sides are set to meet again in July and August.

"I've been disappointed by the lack of real progress and by what I've perceived as a lack of commitment on the part of the industry," Edmondson said. "I want this to be a very clear signal that my patience won't last forever."

Keith Morgan, president of Poultry Partners Inc., which represents about 350 poultry farmers, said he's worried that the suit and tougher regulations will force the industry to leave the state.

"My dad raised chickens, and I raise chickens," said Morgan of Kansas, Okla. "My livelihood and the livelihoods of thousands of others are at stake here."

The attorney general said he doesn't want to hurt the jobs provided by the poultry industry, but that there are even more tourism jobs on the line.

"If people are afraid to go in the water, it will be a death blow to recreational tourism in northeastern Oklahoma," he said.

"I understand that many hard-working Oklahomans and people in Arkansas are tied up in (the poultry) industry. But I also understand that the poultry companies can conduct their business in compliance with the law and remain viable, if they choose to do so."

One of the companies named in the suit, Tyson, spent \$75 million on a year-long advertising campaign to tout the protein in its meats, Edmondson noted.

"But they have refused to accept responsibility for adequate expenditure to clean up this basin," he said.

The 2,363 poultry houses in the Arkansas half of the watershed and the 508 houses in the Oklahoma portion generate the phosphorus waste equivalent to 10.7 million people per year, Edmondson said.

Oklahoma Secretary of Environment Miles Tolbert said companies in other industries such as energy, aerospace and manufacturing look after their waste -- and poultry companies should do the same.

"This entire effort is about fairness," he said. "I fervently hope that the outcome of this effort is an agreed-upon solution, but a solution is necessary whether it's through a settlement or a verdict."

Wilkerson said any water quality issue in the watershed is not entirely the fault of poultry operations or any single industry.

"It defies common sense, and I doubt any scientist could make this claim with a straight face," she said. "We have been saying for a long time that the companies are willing to do

their part, but if the state is serious about water quality, it needs to follow through on comprehensive watershed management programs to address the thousands of sources out there."

The attorney general said he has never claimed that the poultry industry was the only source of pollution, just the major one.

"No matter how much the industry pays its public relations people to spin it, the truth is obvious," he said. "Chicken is the problem."

Named in the suit are Tyson Foods Inc., Tyson Poultry Inc., Tyson Chicken Inc., Cobb-Vantress Inc., Aviagen Inc., Cal-Maine Foods Inc., Cal-Maine Farms Inc., Cargill Inc., Cargill Turkey Production L.L.C., George's Inc., George's Farms Inc., Peterson Farms Inc., Simmons Foods Inc. and Willow Brook Foods Inc.

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#### Related Photos & Graphics



Oklahoma Attorney General Drew Edmondson points to a map of the Illinois River watershed, where he claims the poultry industry is a major polluter. Edmondson filed a federal lawsuit Monday against the industry.

KELLY KERR / Tulsa World

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







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Thu November 3, 2005

## Edmondson says Beebe action shows poultry industry's clout

By The Associated Press

Attorney General Drew Edmondson on Thursday said a Supreme Court petition filed by Arkansas over the Illinois River pollution issue amounts to a poultry industry attempt at political misdirection.

"This is about the poultry industry's control of Arkansas government," Edmondson said. "Why else would the attorney general drag his state into a lawsuit on behalf of corporate polluters?"

He responded to Arkansas Attorney General Mike Beebe's complaint that Oklahoma is trying to impose water quality standards in Arkansas that could harm the state's \$2 billion poultry industry.

Beebe challenged Edmondson on the issue of enforcing Oklahoma water quality regulations behind the state's borders.

In June, Edmondson filed a federal lawsuit against several out-of-state poultry companies over pollution of the Illinois River watershed in northeastern Oklahoma. He alleges the pollution was caused by the over application of poultry litter.

Edmondson said a 1992 Supreme Court ruling reaffirmed the court's consistent position that water quality standards of a downstream state can be enforced upon an upstream state.

"You can't stand on the Arkansas side of the border, dump toxins into the river and wash your hands of the problem," he said. "The state of Arkansas cannot license pollution in a neighboring state."

"Nowhere in Beebe's suit does he claim Arkansas is exempt from federal pollution laws, despite the fact that Oklahoma's lawsuit against the poultry companies includes allegations of federal violations," the Oklahoma official said.

Arkansas asked justices for permission to sue Oklahoma and argued the two states should resolve their differences through the Arkansas River Basin Compact.

Edmondson said that compact specifically says states should use all federal and state water pollution laws to address water quality issues.

"Prior to this date, neither Attorney General Beebe nor Gov. (Mike) Huckabee have requested the Arkansas River Basin Compact be utilized to fix this problem," he said.


Miles Tolbert, Gov. Brad Henry's secretary of the environment, said the it is not practicable to use the commission to resolve the issue because of its makeup.

Tolbert said the 35-year-old panel has three members from Arkansas and three from Oklahoma, plus a nonvoting federal member. He said it takes a majority of member from both states to take any action.

Edmondson said Beebe's action was a sign of poultry companies' "desperation to stop this case from going to trial. It is not their first campaign of misdirection and it won't be their last."

"I know Mike Beebe and I don't think he would have done this as attorney general," Edmondson said. "I think he's doing this as a candidate for governor."

Beebe, a Democrat, has announced his intention to run for Arkansas governor next year.



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**Arkansas attorney general takes water quality battle to high court**

By Janice Francis-Smith  
The Journal Record  
11/4/2005

The poultry industry is running the Arkansas state government, Oklahoma Attorney General Drew Edmondson said Thursday, after Arkansas Attorney General Mike Beebe asked the U.S. Supreme Court for permission to sue the Sooner State.

Edmondson said Beebe's filing is just the latest in a string of assaults he has faced from the poultry industry since June, when Edmondson filed a lawsuit against eight Arkansas poultry companies - including the world's largest, Tyson Foods Inc. - claiming the companies are discharging chicken litter into the Illinois River in excess of what Oklahoma's water quality standards and federal environmental law allow.

Beebe accused Oklahoma of trying to impose its environmental laws on Arkansas, to the detriment of one of Arkansas's biggest economic drivers - the state's \$2 billion poultry industry.

"Oklahoma seeks to impose its own laws and regulations on economic activity and citizens located within Arkansas' borders," reads Beebe's filing. "Agriculture is a primary stimulus of economic growth in Arkansas, making up nearly 11 percent of its gross state product. The poultry industry alone contributes greatly to this output."

In 2001, the poultry industry provided more than 50,000 jobs in Arkansas, paid \$1.21 billion in wages, and exerted a \$1.68 billion impact on Arkansas' economy, according to the filing.

"By the plain language of its complaint, Oklahoma seeks to significantly alter agricultural practices throughout the Illinois River Watershed region, including those practices conducted within the borders of Arkansas," reads the filing. "As demonstrated by its action in the federal district court, Oklahoma aims directly to regulate lawful commercial activity within Arkansas's borders, as a solution to its alleged pollution problems."

Edmondson said he was not surprised by Beebe's filing.

"We have known for years that no bit of environmental legislation gets passed in Arkansas unless Tyson and their buddies sign off on it," said Edmondson. "We have known for years that big poultry runs government in the state of Arkansas, but they don't run government in the state of Oklahoma, and they don't run the federal courts."

Oklahoma has 60 days in which to respond, and Edmondson said his office intends to do so. The U.S. Supreme Court has a number of options. The court could chose to enjoin Oklahoma's lawsuits, ending Edmondson's legal battle with the poultry companies. The court could allow the case to proceed, allowing Edmondson to fight for enforcement of both federal and Oklahoma environmental standards. Or, the court could allow the case to proceed addressing the federal standards only.

"We anticipate the U.S. Supreme Court will deal with this issue and allow the litigation to proceed, and we expect to prevail on that litigation when the time comes," said Edmondson.

In his filing, Beebe said the dispute between the states should be handled through the Arkansas River Basin Compact, which has been in place since 1970 to address water quality issues for the rivers shared by Oklahoma and Arkansas.

"It's my belief that if Mike Beebe were not running for governor, he wouldn't have done this," said Edmondson. "Now I want to stress I have no information to back that up, but I know Mike Beebe, and



I don't think he would do this as attorney general. I think he's doing this as a candidate for governor."

Beebe's press secretary Matt DeCamp said Thursday's filing has nothing to do with Beebe's political aspirations.

"We would not have to respond if (Edmondson) had never filed a lawsuit," said DeCamp. "This is directly in response to his lawsuit, which we feel threatens the state sovereignty of Arkansas. The poultry companies have their own lawyers and can take care of themselves.

"The people that we have to go to bat for are the people who potentially will be the most heavily impacted by Oklahoma's lawsuit, which is the 5,000 family poultry farms in Arkansas," said DeCamp. "They're the ones that are growing the chickens. This is state elected officials that they did not elect into office trying to dictate the laws and regulations that they should follow. And that's why we stepped in."

Edmondson said in his 10-plus years of service as attorney general, this is the first case he's heard of "where a state attorney general has intervened on behalf of a corporate polluter."

The Arkansas River Basin Compact has been used mostly to as a forum for states to agree on how to measure water pollution, not as a forum for hashing out disputes with specific companies, said Oklahoma Secretary of the Environment Miles Tolbert.

The rules of the compact allow both Oklahoma and Arkansas to enforce all state and federal environmental laws without having to go through the commission, said Edmondson, adding that the Supreme Court ruled in 1992 that the water quality standards of a downstream state are enforceable against an upstream state.

But DeCamp said the 1992 case Edmondson spoke of applies only to permits issued by the federal Environmental Protection Agency. And the U.S. Constitution forbids one state from imposing its laws upon another state, said DeCamp.

Three years and nine months have passed since Oklahoma Gov. Frank Keating wrote a letter to Arkansas Gov. Mike Huckabee regarding unacceptable levels of pollution in Oklahoma's rivers, said Edmondson, and negotiations have been ongoing since then.

"This industry has proven by its inaction, by its combating lawsuits once filed, that it will not take any action to stop the pollution of the waters in Arkansas and Oklahoma until they are forced to do so by action of federal court," said Edmondson.

DeCamp said improvements have already been made since Edmondson and Arkansas officials sat down together to talk in 2003.

"We want great water quality in Arkansas and in Oklahoma," said DeCamp. "We sat down with Oklahoma before, in 2003, and we reached new agreements. Then we have the compact commission that's been in place for 35 years to address these issues, and we still hope Mr. Edmondson will decide and realize that's the best place to talk out any problems that one side or the other feels that they have. That's what we're asking the Supreme Court for."

*Janice Francis-Smith reports on governmental and other regulatory issues. You may reach her by phone at 524-7777 or by e-mail, [janice.francis-smith@journalrecord.com](mailto:janice.francis-smith@journalrecord.com).*



## Top firm takes on poultry industry

BY ROBERT J. SMITH

Posted on Sunday, February 5, 2006

URL: <http://www.nwanews.com/adg/News/144800/>

The South Carolina law firm suing al-Qaida and its financiers for \$ 1 trillion wants to help Oklahoma pluck millions of dollars from Arkansas poultry companies.

Suing al-Qaida is by far the biggest of the Motley Rice firm's endeavors. But its attorneys have won millions representing clients suing the tobacco and asbestos industries. Its expertise in landing favorable judgments in lawsuits over transportation-related accidents has brought in millions more.

Those victories, however, pale in comparison to the potential fruits of a class-action case filed in 2002 on behalf of the victims of the Sept. 11, 2001, terrorist attacks. That suit is against the al-Qaida terrorist group and Saudi Arabians the firm thinks financed the attacks.

Now, the firm's attention is focused on poultry firms that Oklahoma Attorney General Drew Edmondson says are fouling the Illinois River watershed.

Motley Rice and two firms in Oklahoma are helping Edmondson represent his state in its federal lawsuit against eight poultry companies with operations in Arkansas. Edmondson blames them for polluting the watershed with poultry litter.

Joe Rice, a partner in Motley Rice, is best known for his skills as a negotiator and his work to get states a \$ 246 billion settlement from tobacco companies in 1998. But he's not new to Oklahoma's dispute with the poultry industry.

Rice was one of the 20 to 25 lawyers who represented Oklahoma last year during negotiations with the poultry companies. Those negotiations failed to reach a settlement, and Edmondson filed the federal lawsuit in June.

"I don't think anyone feared him," said Janet Wilkerson, a vice president with Decatur-based Peterson Farms, one of the companies being sued. "He fit right in with the other attorneys. He didn't stand out if you didn't know the name of Joe Rice."

The poultry attorneys know Rice and his partner Ron Motley because of the firm's legal successes.

The lawyers representing the state of Oklahoma will receive one-third of any settlement or court award as their contingency fee, according to their contract with Edmondson's office. The contract stipulates that the contingency fee plus their expenses can't exceed 50 percent of any money paid to the state by the poultry companies.



"I'm totally confident we can prove this industry is responsible for the pollution," Edmondson said in a telephone interview. "We can prove damage."

That's among the reasons why Edmondson wants the help of Motley Rice, one of the only firms willing to take the lead role in helping Edmondson with his fight.

**PICKING MOTLEY RICE** Edmondson said he was disturbed in 2003 when attorneys received \$ 7. 3 million of a \$ 7. 5 million settlement in the city of Tulsa's lawsuit against Arkansas poultry companies and the city of Decatur over pollution in the Eucha-Spavinaw watershed. Edmondson's promise to his constituents in the Illinois River watershed case is that a higher percentage of money paid will go toward environmental causes rather than lawyers. Charlie Price, a spokesman for Edmondson, said the attorney general's office sought help from private firms because it wasn't prepared to take on the cost of expensive litigation against the poultry industry.

Several firms expressed interest in helping Edmondson, but the number "dwindled" when the firms learned they would pay their own expenses, Edmondson said. The private law firms already have spent \$ 2 million preparing for a federal trial, he said.

"It's a big risk [for the private law firms ]," Edmondson said. "They knew it was going to be expensive, and we ended up with a consortium of lawyers who got together. In the end, they were the only ones who wanted the work."

The consortium includes Motley Rice ; Riggs, Abney, Neal, Turpen, Orbison & Lewis of Oklahoma City ; and Miller & Keffer of Tulsa. Tulsa attorney Louis Bullock also is working on the case, Edmondson said.

Using multiple law firms was the "model in the tobacco litigation," Edmondson said.

In a Jan. 17 speech to 500 farmers in Fayetteville, Arkansas Attorney General Mike Beebe described Motley Rice as "the tobacco lawyers from South Carolina." In a telephone interview, Beebe said he didn't intend it to be a negative comment toward the firm.

"I was trying to paint them in two directions," Beebe said. "They are very good lawyers who are successful in large monetary recoveries.

" But as long as it's monetary, it's much more difficult for farmers, the people in Arkansas and us to solve the environmental concerns. The more the South Carolina law firm is involved, the more difficult it is for us as a state, the more it's about the money and the less it's about the environment."

Mark A. Behrens, a partner in Shook Hardy & Bacon's Washington office, a firm that represents corporations in complex litigation, said private attorneys have different goals than Edmondson and Oklahoma residents. "One of the problems that occurs when a state hires an outside counsel is a conflict in the interest of the state and the interest of the private firm," said Behrens, who took part in a panel discussion last year with Rice at the National Asbestos Litigation Conference. "It may be in the state's interest to remediate and clean up the river and the trial lawyer wants to maximize the financial

recovery. The citizens may be less interested in money and more interested in the water."

**HISTORY OF SUCCESS** Motley Rice's more than 60 attorneys and their 350 supporting employees have a history of huge financial settlements and courtroom victories.

They have the financial "deep pockets" to take on any of the nation's corporations, Behrens said.

Motley Rice was directed by Edmondson not to grant an interview for this story, said Sally Comollo, a spokesman for the law firm. Edmondson said he prefers to do the talking.

"I'm in total control of the litigation," he said.

Past settlements completed by Motley and Rice while they worked for a now-defunct Charleston, S. C., firm include \$ 246 billion in 1998 against four U. S. tobacco producers to be paid out to states over 25 years.

Rice is best known as the key player in that negotiated settlement, which provides money to Arkansas and other states for health-care programs. The National Association of Attorneys General honored him in 1998 with its President's Award for his work on the settlement.

Arkansas' share, which is expected to be \$ 50 million to \$ 60 million annually through 2025, was \$ 51. 6 million last year, said Chiquita Munir, executive director of the Arkansas Tobacco Settlement Commission.

"It's been good for our state," Munir said. "The state of Arkansas has really benefited from the fact that we use our tobacco settlement funds for health care."

Motley, who founded the company with Rice, became known nationally in the 1970 s for his work representing workers injured by asbestos. Asbestos cases still are part of Motley's work.

Newspaper accounts tell of Motley Rice's lawsuits on behalf of the families of pilots killed in plane crashes in Missouri and Florida, of two dozen clam farmers upset about a fuel spill that nearly wiped out clams they harvest in a 15-mile stretch of shoreline in South Carolina, and of several hundred people injured when a Norfolk Southern freight train carrying deadly chloride crashed into a train at Graniteville, S. C.

None of those transportation lawsuits worry the poultry companies as much as being lumped in with the tobacco and asbestos industries as defendants against lawsuits involving Motley Rice.

"Our product is a healthy source of protein," Peterson Farms' Wilkerson said. "We are not the tobacco industry." **COST TO POULTRY COMPANIES**

It's possible that the federal court in Tulsa will never take up Oklahoma's civil lawsuit against the poultry companies.

In November, Beebe asked the U. S. Supreme Court to get involved, saying the case is between the states. Beebe is asking the high court to move the dispute from federal court to the Arkansas-Oklahoma Arkansas River Compact Commission, which was created by Congress in 1973. That's the proper place for the states to address waterquality and water-quantity issues, Beebe said.

"Oklahoma ignores the equitable and obvious mechanism to address its interstate pollutionrelated grievances," Beebe wrote in court filings.

Most Supreme Court cases were previously heard in federal or state courts, but Beebe hopes to take advantage of an exception spelled out in the U. S. Constitution. It reads that the "Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more states."

Edmondson disagreed in a January response to Beebe's request, saying he's not suing Arkansas and that Arkansas is wrongly trying to protect one of the state's biggest industries.

The high court hasn't decided if it will intervene.

Edmondson negotiated with the poultry industry before he filed Oklahoma's federal lawsuit against the companies. Both sides agreed not to reveal details of the negotiations.

The companies would have survived what he proposed, Edmondson said, but he was frustrated by the fact that the companies wouldn't pay or do as much as he wanted.

"At no time did we make a demand in settlement seeking as much as the total cost of reclamation," Edmondson said. "We're aware they couldn't afford it.

"It would work a hardship on some of the smaller companies. That makes litigation a risk more for them than for us."

Wilkerson acknowledged it's a big risk for Peterson Farms. The company paid more than 50 percent of the \$ 7. 5 million settlement in the Eucha-Spavinaw watershed case because it had the most poultry houses in that watershed, Wilkerson said.

"The Tulsa settlement almost closed our doors," she said. "It set us back."

If Oklahoma wins its lawsuit and the pattern of pay is the same as was used in the Eucha-Spavinaw settlement, Springdalebased Tyson Foods Inc. stands to pay the most.

The company owned 54. 5 percent of the poultry houses in the watershed in the first quarter of 2005. Simmons Foods Inc. in Siloam Springs had 16 percent and George's Inc. in Springdale had 14. 4 percent.

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## News Release



*W.A. Drew Edmondson*

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*W.A. Drew Edmondson, Attorney General*

### **Supreme Court Denies Arkansas Attempt to Disrupt Poultry Pollution Suit**

02/21/2006

A corporate poultry scheme to delay Oklahoma's poultry pollution lawsuit was soundly defeated today when the U.S. Supreme Court issued a one-sentence order denying an attempt by Arkansas Attorney General Mike Beebe to interfere in the case.

"I appreciate the court for recognizing that this ploy was without merit and dismissing it outright," Oklahoma Attorney General Drew Edmondson said. "The companies' legal, political and public relations tricks will neither distract nor deter us."

Beebe in November asked the Supreme Court for permission to file a bill of complaint, thereby dragging the state of Arkansas into the lawsuit.

In January, Oklahoma responded to Beebe's filing, arguing that, "Arkansas' proposed lawsuit is nothing more than an attempt by Arkansas to use its status as a state to shield private companies from being held liable for their intentional pollution of Oklahoma's natural resources. Oklahoma's lawsuit is not a dispute with the State of Arkansas, despite Arkansas's repeated assertions to the contrary. Oklahoma has not sued Arkansas and Oklahoma's lawsuit does not challenge the adequacy of Arkansas laws."

The court's order, issued this morning, states, "The motion for leave to file a bill of complaint is denied."

After almost four years of fruitless negotiations, Oklahoma last June filed a federal lawsuit against 14 poultry companies to put an end to the pollution their operations have caused in the Illinois River watershed and Lake Tenkiller. The suit alleges that the poultry companies are legally responsible for the pollution that is caused by runoff from improper land application and storage of hundreds of

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thousands of tons of poultry waste. These improper poultry waste disposal practices violate federal and state environmental statutes and common law.

"In one sentence, the Supreme Court told the Arkansas attorney general what he should've already known - that Arkansas poultry companies cannot exempt themselves from federal pollution laws," Edmondson said.

Edmondson called today's ruling a victory in the state's fight to save Oklahoma's waters from poultry pollution, but the companies will likely continue to employ stall tactics and curry favors from high-powered friends.

Just last week, legislation that would exempt animal waste from a hazardous waste classification, regardless of what it contains, passed the Oklahoma Senate Energy and Environment Committee.

"Animal waste in and of itself is not hazardous waste," Edmondson said. "But when the waste contains elements like arsenic, copper and zinc, it can be hazardous, and the state should be afforded the opportunity to prove that in a court of law. The companies have tried to exempt themselves from the law in the Supreme Court, and they are again trying to gain a free pass from the Oklahoma legislature."

The companies are also stonewalling Department of Agriculture attempts to conduct soil tests at poultry operations in eastern Oklahoma.

"The intensity of the companies' protests should raise a few eyebrows," Edmondson said. "What are they hiding? The answer, of course, is pollution."

Other attempts at political misdirection include the companies attempt to shift the blame to others in the watershed. The industry's "defendants" include small business owners and home owners with septic tanks on the Oklahoma side of the Illinois River watershed.

"We have always said poultry is by far the single largest polluter in the watershed-- not cattle, not golf courses, not mom and pop with a septic tank," Edmondson said. "It's interesting that the companies found no fault with anyone on the Arkansas side of the border.

"The industry does not want this issue to go before a jury because they know what the evidence will show," Edmondson said. "They stalled through four years of negotiations, and they will probably try to stall for at least four more. For the sake of Oklahoma's rivers, streams and lakes, we will not be deterred."

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Wednesday, May 10, 2006

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## Landmark Superfund Suit Prompts State Bill Exempting Animal Waste From Cleanup

A landmark Superfund lawsuit filed by Oklahoma Attorney General Drew Edmondson (D) against concentrated animal feeding operations (CAFOs) is prompting state lawmakers to push a bill that would exempt animal waste from state pollution rules.

Industry sources say the Oklahoma bill could set the stage for other states to consider similar measures at a time when major national agriculture industry groups are also urging federal lawmakers to exempt manure from Superfund law to prevent enforcement against CAFOs (*see related story*).

"It may set standards for what happens on the national level," one Oklahoma agriculture industry official says.

Democratic lawmakers are opposing the federal bill by arguing that it would eliminate one of the few ways regulators can address CAFO pollution because other environmental laws are not adequate to address the problem. EPA also recently acknowledged that the federal bill would eliminate the Superfund natural resource damage (NRD) provisions on which Edmondson's suit relies (*see related story*).

The suit, *State of Oklahoma et al. v. Tyson Foods, Inc. et al*, seeks to hold more than a dozen poultry growers in Oklahoma and Arkansas liable under Superfund for animal wastes used as fertilizer throughout the Illinois River Watershed, which has increased phosphorous and other contamination.

State House lawmakers last month approved a bill that includes language exempting manure from the state's definition of hazardous waste. The bill defines manure to include animal waste, along with "other materials commingled" with the manure, such as bedding or other raw materials. The bill also exempts the "beneficial use of manure" from the definition of waste disposal.

The bill, SB 1444, passed the state House by a 68-27 vote April 19. The state Senate -- which rejected a similar bill earlier this session containing an even broader definition of animal waste, including carcasses -- has not called for a vote on the bill, but has until the end of the month to do so.

A Sierra Club lobbyist, who is working to kill the bill, says its fate is too close to call. It "could go either way," the source says. Sources say Gov. Brad Henry (D) has not yet taken a position on the measure, but Edmondson told *Inside EPA* recently the governor supports his lawsuit.

The bill's supporters, including the Oklahoma Cattleman's Association, the Oklahoma Farmers Bureau and the Oklahoma Farmers Union, say it is intended to protect Oklahoma livestock producers from suits similar to the state's Superfund litigation.

"Our folks are worried," says a source with the Oklahoma Farmers Bureau. "When are they going to start coming after beef? We have large livestock shows in Oklahoma -- horse shows, cattle shows, sheep shows -- if that's termed hazardous waste, then what does that do to that economic tool we have?"

"We need to prevent that before it happens," the source adds.

Rep. Terry Hyman (D), a farmer who is the bill's lead House sponsor, says he is sponsoring the legislation on behalf of beef farmers in his district who are concerned about Edmondson's lawsuit. Hyman argues that his bill "does nothing whatsoever to change any water quality standards."

But Edmondson and local environmental groups are fighting the bill, arguing that it would limit the state's ability to take enforcement actions for polluted runoff that enters state waters. They also say it would eliminate restrictions on how much animal waste producers can legally dispose of as fertilizer.

"We're trying to educate the legislature on how bad it is," the Sierra Club lobbyist says.

Edmondson says that if the bill were to pass, manure would not be considered hazardous under state law, leaving regulators with no recourse to address polluted runoff. Edmondson says current state law is necessary because it allows regulators to enforce lesser cases that do not merit federal involvement. If manure could no longer be considered hazardous under state law, Oklahoma would be forced to solely rely on EPA and federal law to hold CAFOs accountable for water pollution. "That is a significant ramification," Edmondson says, because it is difficult to get EPA to address lesser violations.

Edmonson says that while the bill would not undermine his current suit against poultry producers, which includes complaints under both federal and state law, he notes that it could undermine future suits, particularly claims that rely on alleged violations of state law.

And although he does not anticipate any more suits in the near term, the door to future suits "would be firmly closed" if both state and federal bills were to become law.

Edmonson says he is not so much concerned about manure itself, but feed additives and other toxic materials, such as zinc, arsenic, copper and growth hormones, that end up in manure as a result of the animal feeding process at CAFOs.

In addition, Edmonson is concerned about language in the proposed state bill that says any substance that is commingled with manure is also exempt.

The language has also raised eyebrows among environmentalists, who note that it is written so broadly it could provide unintended exemptions. "What does that mean -- that they can mix nuclear waste with manure and it won't be considered hazardous?" the lobbyist asks.

Meanwhile, Arkansas Attorney General Mike Beebe (D) is continuing his efforts to block Edmondson's suit after the Supreme Court earlier this year rejected his bid to review it.

Beebe last week filed a [motion to intervene](#) in Oklahoma's suit, arguing that it violates a bilateral water quality agreement between the two states intended to reduce phosphorous and other nutrient runoff. Oklahoma is "alleging that it is dissatisfied with cooperative efforts [and] has resorted to unilateral action," [Arkansas's brief says](#).

If allowed to intervene, Beebe will ask the federal court to dismiss claims against the farming companies, according to a statement his office issued. In the statement, Beebe says the issue should be handled through the federally approved Arkansas River Basin Compact Commission with representation from both states. -- *Douglas P. Guarino*

# GUYMON DAILY HERALD



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## News

### Edmondson makes campaign stop in Guymon

By TRAVIS METCALF/Staff Writer  
Wednesday, May 31, 2006 1:59 PM CDT

Oklahoma's Democratic Attorney General Drew Edmondson said he would announce later this week there will be a statewide criminal tracking system for victims to follow criminals in the area.



Shawn Yorks/The Guymon Daily Herald — Oklahoma Attorney General Drew Edmondson, right, with wife, Linda, were in Guymon on Tuesday.

The system was set up through a grant from the U.S. Department of Justice.

"It's in 19 states total and Oklahoma will be a total system," Edmondson said. "It's in a number of other states where it's localized, one county or one major city. Tulsa had it before we went forward with a statewide system."

The Victim Identification Notification Everyday system allows people to go online and look up a criminal and find out where they are and exactly what is happening to them such as if they are being moved to another facility or being released.

A victim or people close to a crime victim can also enter their information on the web site and find out by phone anytime the criminal moves from one facility to another, anytime the person is up for parole or anytime the person is being released.

"It's a great comfort to victims to be able to know that they will be advised about those steps in the process," Edmondson said.

The VINE system should be up and running next week.

Edmondson made stops in Guymon, Boise City and Beaver to kick-off his re-election campaign.

Edmondson announced last month that he would seek re-election for a fourth term. He was first elected in 1994 and had no opposition in his 1998 election.

This year Edmondson is running against Republican James Dunn who is the only declared Republican in July's Republican Primary one week before the



candidate filing deadline.

"I think having an opponent is probably a healthy thing," Edmondson said. "I think we've got a good message and I think I and my office have compiled a good record over the last 12 years."

The Panhandle was the first stop in his 77-county tour which should be completed around the first week of September.

Today Edmondson will be in Harper and Woodward counties.

This is the fourth time Edmondson has done his 77-county tour.

He also did the 77 county tour in 1997 to personally deliver posters about filing false liens but did not do so to campaign because he was unopposed in his 1998 election.

Most of the litigation he is involved in has no effect on Guymon and he said he sees nothing in the future that could effect Guymon or the Panhandle.

"I don't know of any litigation that would involve this area," Edmondson said.

There is litigation against poultry companies in Eastern Oklahoma and Arkansas with the largest company being the Tyson Foods Plant in Arkansas.

The litigation is how companies spread manure. Edmondson contends these companies are dumping manure, not using it as fertilizer.

"It's an excellent fertilizer," Edmondson said. "To the extent it is needed as fertilizer it should be applied. But if you put down all that the plant needs and continue to put it down, then you're not fertilizing, you're dumping and it's going to end up in the water. That's what we've alleged."

The poultry litigation is expected to go to trial in January of 2008. Edmondson said right now they are in the investigation phase.

"This lawsuit is specific to the Illinois River Watershed," Edmondson said. "So this lawsuit wouldn't effect Western Oklahoma at all."

Dunn accused Edmondson's administration as being one of the most corrupt administrations in Oklahoma history. Edmondson continued to refute that Tuesday.

"I think the people of Texas County are as interested as the people of Oklahoma County or Tulsa County in good government and making sure that government is clean, is honest, that their tax dollars are spent without fraud or corruption, and over the last 12 years we've worked very hard to make sure that that's certain," Edmondson said. "We've cleaned up scandals in the health department, the corporation commission and the insurance department and we'll continue to try to make sure that government runs cleanly."

The Oklahoma Primaries are July 25. The general election is Nov. 8.

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From your corner of the world ... to the world in your backyard

# The Daily Times

## Waste worries: Ag, AG square off

By James S. Tyree  
CNHI News Service

OKLAHOMA CITY— Don't get Marla Peek started.

The regulatory affairs director for the Oklahoma Farm Bureau cannot believe anyone would consider animal waste, the most natural of fertilizers, an environmentally hazardous material.

"We flat out do not agree with that," she said. "We think it's flat out ridiculous."

The animal waste issue has lingered for several years, and it appears that will continue. A lawsuit filed by Oklahoma Attorney General Drew Edmondson against 14 poultry producers enters its second year, the Oklahoma Legislature this spring considered a bill that declared manure is not a hazardous material and Congress is preparing to do the same.

House Resolution 4341, authored by U.S. Rep. Ralph Hall, D-Texas, would say animal waste is not a hazardous material and would amend the environmental Superfund law to exclude agricultural waste.

Meanwhile, Edmondson said the federal lawsuit remains in its discovery, or fact-finding, stage and has a tentative trial date in early 2008.

"It will not be resolved soon," he said, "which means we'll probably have legislative battles next year and continue the PR war with the poultry companies."

Edmondson claims in the lawsuit that excess chicken litter is polluting the Illinois River watershed, killing its wildlife and forcing city governments to spend more money to treat it.

The attorney general actually agrees with Peek to a point, saying animal waste, in itself, is not a hazard. He says the problem comes when millions of chickens in concentrated animal feeding operations produce too much waste for the land to handle.

A single poultry house can hold up to 25,000 birds in close quarters, and the number can turn over four or five times a year.

"A typical poultry farm will have at least three houses and up to 20," Edmondson said, "so we're talking about literally millions of birds on a single piece of ground and the waste of those birds, historically, has been spread on the land as fertilizer."

He said the fertilizer is excellent, "but plants only need so much nitrogen and phosphorus. Once you put down all that the plants need and continue to surface-apply it, the plants can't use it, it washes off into the stream, it fertilizes the water and increases the algae bloom in the water."

The algae consumes oxygen in streams and lakes, he added, which "kills wildlife, it makes the water smell, it makes municipalities spend more on water treatment and increases the levels of chlorine necessary to treat the water."

He filed the lawsuit in federal court because more than 2,300 of the chicken farms in the watershed area are in Arkansas. About 500 are in Oklahoma.

Janet Wilkerson, a spokesperson for Peterson Farms in Decatur, Ark., one of the lawsuit's defendants, questions the basis of that conclusion. She said no state or federal regulatory agency asked the attorney general to file suit.

"None of the poultry companies of the farmers who raise chickens and turkeys in Oklahoma or Arkansas have been accused by environmental regulators of pollution in the application of poultry litter as organic fertilizer," she said. "No laws have been broken."

The attorney general contends the poultry companies, by polluting the watershed and Lake Tenkiller with their chickens' excess waste, are in violation of federal regulations under the Superfund law. It's the language U.S. Rep. Hall hopes to change with his bill.

Another sticking point is the vast soil testing Edmondson wants conducted on numerous chicken farms to gain more data for the lawsuit. Many are fighting it, calling it an intrusion on their property rights and privacy; the attorney general says it's permissible as a condition for farms to receive their permits.

The companies named in the suit include Tyson Foods, Peterson Farms, Simmons Foods, Cargill, Cal-Maine Foods, George's, Aviagen, Cobb-Vantress, Willow Brook Foods and some of their subsidiary companies.



Waste worries: Ag, AG square off

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Both sides say they would welcome a settlement, though Wilkerson said there have been no settlement negotiations since August.

Any new laws or court verdict will affect thousands of Oklahoma residents. Wilkerson said about 12,000 Oklahomans work directly or indirectly with the poultry industry.

Statistics from the Oklahoma Department of Agriculture, Food and Forestry say the state produced just short of 250 million chickens raised for meat between Dec. 1, 2004, and Nov. 30, 2005, up from nearly 244 million the previous year.

The broilers' production value was \$556.3 million last year, compared with \$547 million in 2004.

Wilbur Hundl Jr., director of the department's statistical data, said those figures don't include chickens raised for egg production. Most chicken operations in Oklahoma are in the eastern part of the state, but they are part of the state's significant stake in livestock.

Peek of the Oklahoma Farm Bureau said the state normally ranks among the top 10 in poultry and swine production and the top five in cattle.

"We're a cattle state; we're huge in cattle," she said. "This is not just a poultry issue, it's a manure issue."

Department of Agriculture figures show the state had 5.45 million head of cattle in 2005, compared with the human population of about 3.5 million. The number of hogs in Oklahoma ranges between 2.3 million and 2.5 million.

Peek said if regulations on animal waste become more stringent, "you would have to change the entire scheme of how the livestock industry does its business if it was declared hazardous waste."

And that would be unnecessary, she said, because of federal regulations like the Clean Water Act. In addition, Oklahoma has pioneered laws regarding manure and the environment.

"We were one of the first states in the nation to have nutrient management standards prescribed in state laws, and our state regulations exceed federal standards," Peek said.

But Edmondson doesn't believe beef, pork and smaller poultry producers pose many problems because most of them adhere to state regulations. He shook his head while saying the legal action is not about them.

A concentrated animal feeding operation for hogs must have holding ponds with proper lining for manure, and some can be applied as fertilizer. Cattle typically graze in more open areas, but feed lots for cattle and the waste they generate are also regulated.

Farmers who violate the regulations are fined.

Poultry operations are also regulated, Edmondson said, but the larger CAFOs have the most violations.

"The permits, the law and the regulations all state that in no event shall their application result in runoff to the waters, and that is what's being violated," he said. "It's every day, but it's not intentional. The farmers aren't taking this stuff down and dumping it in the creek; they are surface-applying it to the land and it's running off because the land can only take so much."

When asked how the state is cracking down on the large poultry operations, Edmondson said, "We're suing them, aren't we?"

Josh Payne, a poultry waste expert with the Oklahoma State University Cooperative Extension, said each poultry feeding operation, regardless of its size, must follow nutrient management guidelines established in the state's animal waste management or pollution prevention plan.

"These guidelines only allow litter use as a beneficial fertilizer to pasture or cropland, not as a disposal system," Payne said. "If poultry waste or litter cannot be used according to nutrient management guidelines on the premises, the producer must see that it is removed to a location where it can be used properly."

That would involve trucking, disposal and other costs that could be expensive for farmers. Payne said composting litter and sending it to other parts of the state that need it would be great, except "high transportation costs somewhat impede the process."

Edmondson said cost is a big reason why he thinks poultry companies in his lawsuit should pay for moving the hundreds of thousands of tons of stored waste, and not the farmers who raise chickens for them but typically own the litter.

"The wheat farmers in western Oklahoma would love to get this, but there is a dollar cost to the transportation," the attorney general said. "Farmers cannot afford to truck it out to Ellis County, Oklahoma, and sell it to wheat farmers. The corporations created the problem; the corporations need to deal with it."

In a similar case that reached settlement in 2003, Tyson Foods, Peterson's Farms, Cargill, George's and Simmons agreed to pay the city of Tulsa \$7.5 million and to ship their chickens' excess waste away from Lakes Eucha and Spavinaw, the city's main water sources.

Despite the Tulsa decision and the position of Edmondson, the Sierra Club and others who say excess waste poses a hazard, doubts over environmental concerns with standards already in place and worries about the suit's



Waste worries: Ag, AG square off

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economic impact remain.

"If it's an imminent threat, why aren't people getting sick and going to hospitals?" Peek asked. "I don't see it, but I think it's a huge, huge threat for the industry."

Wilkerson said poultry companies already ship litter, with help from U.S. Environmental Protection Agency grants, and would be open to doing more. Having been raised on a chicken farm, Wilkerson said farmers and agricultural companies have more at personal stake in caring for the environment than most people.

On the other hand, she worries that a huge settlement in Edmondson's favor, "could bankrupt some companies and bankrupt some farmers."

James S. Tyree is CNHI News Service Oklahoma reporter.

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## AG Edmondson visits Enid

— By Robert Barron  
Staff Writer

Sometimes Attorney General Drew Edmondson likes to be in the headlines. Especially when he is talking about a new program called Victims Information Notification Everyday (VINE).

The program will track convicted felons in the state system, tell crime victims where they are in the system, when they are up for parole and when they will be released. Edmondson said the program will be operational in Oklahoma, Tulsa and Comanche counties within 90 days and statewide within two years.

Edmondson, a Democrat, spoke about VINE and other topics during a visit to Enid Thursday. He is running for re-election this year and will face Republican James Dunn.

Beyond citizen use, he said, VINE has implications for law enforcement, as well. If someone state authorities are looking for is arrested for a DUI in another state Oklahoma authorities will know.

"If it's a DUI, the local police may not know to run them on NCIC (National Crime Information Computer). This way they will know," he said.

On other topics:

- Edmondson has been roundly criticized for his lawsuit against poultry companies in Arkansas for reportedly polluting Oklahoma's water. The case will not go trial until 2008, he said, unless there is a structured settlement. Edmondson said members of the poultry industry would like cattle producers to think the lawsuit applies to them, too, but it does not.

"The cattle industry should not be involved in this fight because cattle are not part of the litigation," Edmondson said.

Edmondson's concern is the amount of poultry waste dumped on the ground, which he said is beyond that needed for normal fertilization. He contends the waste is polluting water that flows into Oklahoma.

Edmondson said he has met with the members of the Oklahoma Cattlemen's Association and other agriculture groups to present his situation.

- Edmondson's office led the trial of former State Insurance Commissioner Carroll Fisher and has prosecuted other government officials. He prosecuted the head of the Oklahoma Department of Health and several "ghost employees," he said.

He helped establish the multicounty grand jury system and has worked with the state auditor and inspector, Oklahoma State Bureau of Investigation and local law enforcement agencies to investigate and prosecute government corruption.

- As attorney general, Edmondson said he has pushed for reforms in the death penalty appeal process in both Oklahoma and at the federal levels. He said he now is urging the federal government to adopt strict methamphetamine laws.

- In the area of eminent domain, Edmondson is urging a tighter definition of the term "blight." According to the state Constitution, he said, property only can be taken by the government for public purposes. He said he opposes a state question that will be on the ballot in November he believes will limit the ability of a community to clean up slum areas. Instead, he wants to see the definition of what is considered blight tightened up.

"The amendment is overbroad. It is anti-growth, anti-business," he said.

- He also opposes the so-called Taxpayer Bill of Rights (TABOR) amendment that restricts the amount of money the government can spend. He filed a brief in the Oklahoma Supreme Court outlining the areas of TABOR he believes are unconstitutional.

"It addition to being unconstitutional, it is bad public policy," he said.

- Edmondson has been assertive in the enforcement of open records and open meetings laws. He said the laws are not followed by everyone all the time. Most of the violations involve executive sessions, and he receives

several complaints a month, mostly from the news media.

Typically, he calls the local district attorney and will try to resolve the situation that way. He has discussed forming a public integrity unit in the his office that would have enforcement power, in addition to education. Edmondson said District Attorney Cathy Stocker has been good in resolving open meeting and open record cases.

Edmondson was elected attorney general in 1994 and re-elected in 1998 and 2002.

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Tuesday, June 20,  
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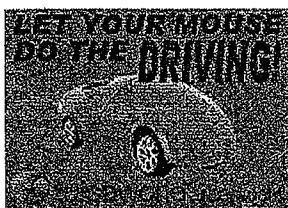


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## Poultry Lawsuit: Seeking Proof in a Pasture: Digging up the dirt

By CURTIS KILLMAN World Staff Writer  
6/20/2006

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**A state attorney general's crew  
thinks soil samples will help  
prove pollution in the Illinois  
River watershed.**

STILWELL -- A cow bellows across the ridge as the worker begins driving the 2-inch diameter pipe into Ren Butler's pasture.

"Ping! Ping! Ping! Ping! Ping!"

The worker, an environmental consultant hired by the state Attorney General's Office, pulls the pipe out of the ground. A co-worker scrapes the soil out of the pipe end into a clear plastic bag. Another co-worker writes in a ledger. A fourth snaps photos of the events.

All the work is monitored by another team of consultants -- this one hired by representatives for area poultry companies -- who silently observe by videotaping, photographing and otherwise making their own record of the proceedings.

Butler, a high school biology and chemistry teacher, also watches the two groups, occasionally taking pictures with a disposable camera.

"I think it's kind of unnecessary," said Butler, who has been up since 6:30 a.m. readying for the Monday gathering.

The effort is part of Attorney General Drew Edmondson's federal lawsuit against the poultry industry over alleged pollution of the creeks and streams in the Illinois River watershed.

Edmondson claims the litter -- composed of bedding and poultry manure -- damages the environment when too much of it is spread on pastures, sending phosphates and other elements into the watershed when it rains.

Edmondson seeks to collect soil, water and litter samples from nearly two dozen properties in the watershed. Most of the properties are owned by poultry growers who raise chickens and turkeys for poultry processors.

The state hopes to establish a "poultry fingerprint" to link to the damages believed to be occurring to the Illinois River, Edmondson said. Officials hope to do that by tying the chemicals found in the soil and water



Contractors for the state Attorney General's Office (wearing white boot covers) take soil samples Monday from land belonging to Ren Butler (second from left) near Stilwell. Observing the soil sampling are consultants for the poultry industry (in yellow boots).

JAMES GIBBARD / Tulsa World



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samples to those found in the litter.

"We believe we can prove the case just statistically based on what has happened in the watershed, but we would like to be able to prove it scientifically," Edmondson said.

Attorneys for the poultry industry and the growers doubt such a claim can be proven.

An attorney for Butler and growers ordered to provide access for sampling believe other sources of nutrients, such as commercial fertilizer and human and animal waste, can pollute the waterways, too.

"I don't know the way to distinguish between which source is contributing" to pollution, said Ken Williams, a Tulsa attorney representing Butler and poultry growers.

Williams said it was distressing that the property owners are not permitted to know the results of the sampling.

Poultry growers, meanwhile, have called the sampling an unwarranted invasion of their rights.

Complaints about the sampling process rankle Edmondson. "It has bothered me throughout this whole deal," Edmondson said about the complaints.

The poultry operations "are licensed by the Department of Agriculture to engage in poultry-growing operations because of the numbers of birds involved," Edmondson said. "For them to question the ability of the state to come in and take samples is like a restaurant saying the health department can't come in and look for mouse droppings."

But for Butler, it is a different matter. Butler is one of the few landowners targeted for sampling who does not operate a poultry farm.

Butler said he believes he was targeted for sampling because representatives for the attorney general learned through surveillance that he had purchased litter from a nearby poultry grower. The litter was spread on about 30 acres of his farm to fertilize the pasture for his 30 head of cattle.

The litter is cheaper than commercial fertilizer. But now Butler wonders whether it was worth it.

"I wouldn't have put it on if I'd known I would have to go through this," Butler said.

Neither Butler nor any of the growers are named as defendants in the lawsuit. The lawsuit names 13 poultry companies.

Edmondson says he has a "great deal of sympathy" for the poultry farmers.

The companies have said for decades that the burden of dealing with the poultry litter rests with the poultry grower, Edmondson said.

"And they've done the best they could under the rules," Edmondson said. "But the farmers can't afford to fix the problem. The farmers cannot afford to truck the excess (litter) out of the basin. We're trying to place that burden on the companies where it belongs."

Meanwhile, the sampling is expected to continue through Tuesday at Butler's pastures.

The two groups work largely in silence. Talk between the teams is rare. The workers decline to talk to or identify themselves to reporters.

The consultants' allegiances can be determined by the color of their footwear.

The attorney general's consultants have donned white, disposable, bootlike covers. Consultants for the poultry industry wear yellow rubberlike boots.

The foot protection is designed to minimize the spread of possible diseases on poultry farms.

The attorney general's consultants can take up to 240 six-inch soil samples at each property they visit.

Half of the samples goes to a lab for the attorney general, and the other half goes to a lab retained by the

poultry industry.

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Realizing it will be a long day, Butler retells a joke he has cracked with his friends about the ordeal and his decision to invite reporters to the event.

"My 15 minutes of fame, and I'm talking about chicken s---," Butler said.

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# Commissioners Speak Out Against Pollution Lawsuit

## Farmers Hear Support From Group Responsible For Protecting Illinois River Watershed

THIS ARTICLE WAS PUBLISHED ON THURSDAY, JULY 13, 2006 10:29 PM CDT IN NEWS

By John L. Moore

The Morning News

Area farmers and poultry companies got some support from an unlikely source in a federal pollution lawsuit against area poultry companies this week.

The chairman and past chairman of the Oklahoma Scenic Rivers Commission recently denounced Oklahoma's suit against the poultry companies in the Illinois River watershed.

Oklahoma Attorney General Drew Edmondson filed the lawsuit in June 2005 against 14 poultry companies for applying poultry litter to fields in the region.

The commission has battled to improve water quality in the Illinois and its sister scenic streams for years.

Bill Blackard, chairman of the commission, and Rick Stubblefield, a past chairman and current commissioner, said they believe the best way to work toward significantly reducing the amount of poultry litter spread on fields in the watershed is by negotiating with the companies as they did with the state of Arkansas in 2003.

"I'd like to see both sides sit down and settle this without going to court," Blackard said in a recent telephone interview.

Edmondson said talking about a settlement was stating the obvious.

"I don't think there is anybody in Oklahoma or Arkansas that would not prefer a negotiated settlement, but it takes two to negotiate. The day they are willing to come back to the table,

they'll find me sitting there," Edmondson said Thursday.

The poultry companies refused to negotiate in good faith, Edmondson said.

"We tried for three and a half years to negotiate," he said.

In 2003, Ed Fite, administrator of the commission, joined with three other Oklahoma agencies and signed a joint statement of principal with Arkansas environmental officials on reducing phosphorus in the watershed.

The result of that agreement was \$200 million in wastewater treatment plant improvement by Northwest Arkansas cities, said Rick Stubblefield, a commissioner.

The agreement also outlined a path to help reduce the amount of poultry litter spread on fields in Northwest Arkansas. Litter traditionally has been used as a fertilizer. Arkansas legislators approved three laws in 2003 to help regulate nutrients spread on fields in areas that have excessive nutrients in the soil.

For the past year, the commission has been relatively silent on the lawsuit, even though it is the front line of Oklahoma's effort to maintain water quality in the watershed.

Blackard and Stubblefield spoke out recently after attorneys for the attorney general's office requested an executive session of the commission to discuss the lawsuit.

"The Attorney General's office, to all intents and purposes ignored the existence of the Oklahoma Scenic Rivers Commission throughout the entire settlement and negotiation talks with poultry companies," Stubblefield said.

Stubblefield said the commission was never asked by Edmondson's office to provide serious input on what was needed to improve water quality in the watershed during the time Edmondson's office was negotiating.

After receiving the request, Blackard called a special session and placed the request for an

executive session on the agenda. The meeting was to have occurred Thursday. But, over the past week, half the commissioners indicated they did not want an executive session, Stubblefield said.

At that point, Edmondson's office called off the meeting.

Stubblefield said the commission was willing to meet openly, with the public in attendance.

Edmondson said, "We'd be happy to talk to the (commission) under any circumstances they would like to hear us. It should be obvious to them that we would be less able to talk about the details of the suit in an open session. We are their attorneys and are the attorneys in the litigation, and we are not going to damage our litigation in that manner."

Edmondson also commented that Stubblefield represents Adair County on the commission and that Adair County has the largest number of poultry farms on Oklahoma's side of the watershed.



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## Poultry flap due public forum

CURTIS KILLMAN World Staff Writer

07/29/2006

Tulsa World (Final Home Edition), Page A13 of News

### **Poultry companies plan newspaper ads to rebut what they say are false claims by the attorney general.**

Poultry companies say they plan to launch a newspaper ad campaign to challenge what they claim are inaccurate assertions by Attorney General Drew Edmondson.

The newspaper ads, to be run primarily in northeastern Oklahoma community newspapers, are aimed at countering what poultry companies claim are statements made by Edmondson as part of a federal lawsuit filed by the state in 2005.

The defendants are 13 poultry companies that are accused of polluting the Illinois River watershed.

"The Attorney General continues trying his case in the court of public opinion by spreading exaggerations, innuendo and untruths," poultry industry spokeswoman Janet Wilkerson said in a written statement.

"We are perfectly willing to discuss this issue in a public forum," Wilkerson said. "But we insist that this discussion be based on facts -- not political rhetoric."

Edmondson said the ads are just another attempt to derail the lawsuit.

"There is no doubt in my mind that we can make the case in court that poultry litter is the predominate cause of pollution of the rivers and the lake, and there's not a doubt in my mind that they know that," he said, referring to the poultry industry.

"That's why they've tried to stop this in the Oklahoma Legislature," he said. "That's why they've tried to stop it in Congress, and that's why they are running these ads."

Five ads use a fact-versus-fiction format dealing with various aspects of the litigation.

One ad claims that Edmondson has said poultry companies are dumping poultry litter into streams and lakes.

The poultry industry says Oklahoma and Arkansas farmers are subject to some of the most stringent laws in the nation and that the Oklahoma Department of Agriculture states that farmers are abiding by the laws.

Edmondson said he has never made that claim.

"We're saying it gets into the rivers and lakes by land application," he said, referring to poultry litter nutrients.

Another ad terms as fiction a supposed claim by the attorney general that the poultry industry "is refusing to haul poultry litter out of Oklahoma watersheds."

The poultry industry says it has hauled thousands of tons of poultry litter out of the watershed and committed hundreds of thousands of dollars to federal programs to help do so.

Edmondson calls that claim false, too.

"I've never said they 'refused to' haul poultry litter out of Oklahoma watersheds," he said. "I've said they haven't hauled out what they need to haul out."

He called the amount of litter that has been removed so far "minuscule."

The federal lawsuit claims that poultry litter, when applied excessively as fertilizer to fields, ends up in streams and lakes when it rains.

Nutrients in the fertilizer cause excessive algae growth, which can lead to taste and odor problems in drinking water supplies.

The poultry industry also terms as "fiction" the claims that poultry production causes harm to the drinking water in the Illinois River watershed.

The industry says the drinking water drawn from the watershed is safe -- "safer in fact, than the drinking water in many other areas of Oklahoma where poultry is not produced."

Edmondson agrees that the drinking water is safe after it is treated.

"Water is safe when it comes out of the tap," he said. "That doesn't mean it wasn't harmed when it went into your water treatment plant. The fact that you can fix the harm through excessive chlorination -- you're talking apples and oranges."

Overapplication of poultry litter as fertilizer has forced Tulsa and other cities to spend thousands of dollars to treat elevated algae levels in raw water supplies, he said.

Wilkerson said the ads will run indefinitely.

"We will continue setting the record straight," she said. "And any time the attorney general makes another false statement, we will be quick to respond with a message that sets the facts straight."

The attorney general said the advertisements are familiar to him.

"It reminds me a great deal of what the tobacco industry did back in the '50s," he said, "when they ran big ads saying they were going to talk straight to the American people and went on to say there was no link between smoking and cancer."

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## Oklahoma-Arkansas Dispute Exposes National Problem



Written by Christopher Law

Tuesday, 29 August 2006

A lawsuit filed by the Oklahoma Attorney General against Arkansas poultry farms over pollution of the Illinois River is one of many new interstate environmental disputes growing out of relaxed federal enforcement. State and local governments increasingly reach beyond their borders to control pollution that they say the federal government should have prevented.

This controversy is detailed in an August 28 Washington Post story by Juliet Eilperin. The Natural Resources News Service developed the idea for the story and provided examples of interstate environmental disputes to the Post.

Oklahoma's complaint, filed last year, seeks injunctive and monetary relief from 14 large food processing companies in Arkansas. Oklahoma says the companies dispose of poultry waste by piling it on fields in large amounts that belie their claim that it is meant to be fertilizer. "They're not fertilizing; they're dumping," Oklahoma Attorney General Drew Edmondson told Eilperin.

The Illinois River draws large crowds of canoeists, fishermen, and other nature lovers to its wooded banks and feeds the once clear Lake Tenkiller. Oklahoma calls Tenkiller its "crown jewel of lakes." People used to come from hundreds of miles to scuba dive there. Recreation from the Illinois River is worth more than \$50 million per year to Oklahoma, according to Ed Fite of the Oklahoma Scenic River Commission.

But Fite regrets that the river is now cloudy all year, fish die from anoxia, and the whole thing becomes a putrid foul-smelling mess in the spring and fall when the algae turns over. Most people wouldn't know they were swimming in chicken excrement if it weren't for the algae which thrive in the nutrient-rich water of the Illinois River. "It's not very appetizing," Fite grieves. "People don't want to get in it."

The Arkansas attorney general jumped into the case on the side of the large companies located within its borders, saying Oklahoma had no right to regulate the application of fertilizer in Arkansas. The defendants, mostly familiar public companies like Tyson Foods, constitute a large part of the Arkansas economy and job base.

The dispute recently became a boon for Oklahoma law firms when the food processor defendants persuaded the court to draw more than 100 third-party defendants into the growing melee. These were businesses in Oklahoma that also allegedly discharge nutrients into the Illinois River, according to some of the Arkansas poultry companies.

The dispute is also at the center of a lobbying effort by agricultural interests to push through an agricultural exemption to Superfund. Farmers for Clean Air and Water represented by the Livingston Group in Washington D.C. has obtained at least 177 cosponsors to the bill introduced by Rep. Ralph Hall (R-Tex.).

Edmondson says he was dismayed to learn that farm lobbyists were using Oklahoma's case against the Arkansas poultry companies to justify their pursuit of an exemption to Superfund. And he was furious over what he believes is the dishonesty of pretending that Big Agriculture feels the pain of small family farms.

That would be a travesty for hundreds of rivers dying of agricultural pollution across the country, according to environmentalist David Franklin. "The bill would take away all incentive for them to do anything about it."

One thing no one disputes is that the cost of fixing the problem will be high. Attorney General Edmondson acknowledges that the 14 food processors he is suing will face a significant competitive disadvantage if he wins.

Edmondson says he regrets that a victory for his side will raise the cost of Arkansas poultry by 10 cents a bird in a market where fractions of a penny mean precious market share. "This is a national problem, and there really should be a national solution applied equally to everyone," Edmondson complains.

But a solution is not likely to come from Washington these days, says Eric Schaeffer, former director of EPA's Office of Regulatory Enforcement. "Water pollution enforcement against factory farms has been at least difficult or impossible since around 2001 or 2002," he says. Schaeffer now heads the Environmental Integrity Project in Washington after leaving EPA in February 2002 because he said he was sick of weak support for environmental enforcement from the administration.

The struggle between Oklahoma and Arkansas is one of at least 9 other interstate disputes (detailed below) that have arisen as a result of EPA's relaxed enforcement under the Bush Administration to control air and water pollution. Schaeffer says that, like water pollution, air pollution enforcement, "especially against coal-burning power plants, has become almost impossible under the Bush administration."

### Water Disputes:

- The city of Waco, Texas settled a claim in January 2006 against 14 dairies outside of the city's limits whose waste was polluting the Bosque Watershed, a major source of drinking water for the city. The terms of the settlement were different

for each dairy. Some agreed to halt operations entirely while others agreed to a wide range of pollution controls, according to the city's outside counsel Roy Lee Barrett of Namen, Howell, Smith and Lee. The case is *City of Waco v. Schouten, et. al.*, United States District Court, Western District of Texas, no. w04-ca-118.

- Montana is defending water standards it recently implemented which would force energy companies operating in Wyoming to clean up pollution from underwater mining operations. Montana aims to reduce the salinity of river water coming from Wyoming where gas wells in coal-bed formations were discharging subterranean salt water into the Big Horn River. Pennaco Energy, Inc., Marathon Oil Company, and Devon Energy, all Wyoming well operators, filed suit against the Environmental Protection Agency seeking an order to invalidate the agency's approval of Montana's water regulation. Wyoming intervened on the side of its energy companies contending that Montana's water quality regulations violate Wyoming's sovereignty. The case is *Pennaco Energy Inc., et. al. v. United States Environmental Protection Agency*, United States District Court, District of Wyoming, no. 06-cv-0100-b.

- Kentucky is threatening action against Virginia strip mines and the Army Corps of Engineers. The US Army Corp and the Virginia Department of Mines, Minerals and Energy are in the process of approving a request by CONSUL Energy, a coal mining company operating in the western part of Virginia, that would allow CONSUL to discharge a billion gallons of briny mine water into the Lavisa Fork River eight miles from the Kentucky border. Kentucky Assistant Attorney General Scott Porter says, "Our position is that the permitting decision is being made without adequate consideration of the effect that the discharge will have on Kentucky waterways." In addition to not adequately assessing the proposed discharge from a water quality standpoint, Kentucky is concerned that Virginia and the Army Corp of Engineers are also not "considering the impact of the volume of water that is going to be discharged into Fish Trap Reservoir." Mike Abbott, spokesman for the Virginia Department of Mines, acknowledged that Virginia was aware of Kentucky's concerns. "The comments we received from Kentucky at our public hearing are being reviewed. This is a work in progress," he said.

- New York and Connecticut have gone to federal court seeking an order to make EPA issue water standards that will protect those states from upstream polluters and eliminate the competitive disadvantage that businesses in Connecticut and New York suffer as a result of the relaxed regulations in neighboring states. The plaintiffs challenged EPA's April 2004 decision not to finalize rules that would have controlled storm water runoff from construction sites, according to New York Assistant Attorney General Philip Bein. "The reason for effluent limitation guidelines was to avoid a race to the bottom among states," Bein said. As a result of EPA's inaction, storm water runoff from out-of-state construction sites without effluent guidelines were contributing to pollution problems in New York and Connecticut and putting businesses in those states at a competitive disadvantage. The case is *Natural Resources Defense Council et. al., and State of New York, et. al., v. Environmental Protection Agency, et. al.*, United States District Court for the Central District of California, no. cv04-8307.

#### Air Disputes:

- New York, Pennsylvania, Connecticut, New Jersey, and Maryland, sued Allegheny Energy, a Western Pennsylvania power company, in June 2005 to reduce its air pollution after EPA's new source review determined that plant modifications did not require the company to meet tight air pollutions controls that apply to new sources of pollution. The plants were previously under investigation by EPA but the investigation was called off by the Bush Administration. Attorney General Blumenthal of Connecticut attributes the necessity of this lawsuit to the lack of federal enforcement. "We waited for the federal government to act responsibly and now must fill the vacuum left by its surrender to special interests," he said in a press release. The case is *Commonwealth of Pennsylvania, et. al. v. Allegheny Energy, Inc, et. al.*, U.S. District Court for the Western District of Pennsylvania, no. 05cv0885.

- New York, Connecticut, New Jersey, and Pennsylvania, led by Elliot Spitzer of New York, announced their intention to sue Allegheny Energy plants in West Virginia, but Allegheny preempted the suit with a suit of its own against New York, New Jersey and Connecticut. That case is *Allegheny Energy Supply Company, LLC & Monongahela Power Co. v. Spitzer et. al.*, U.S. District Court for the Northern District of West Virginia, no. 1:05cv00004.

- Connecticut, New York, California, Iowa, New Jersey, Rhode Island, Vermont, Wisconsin and the City of New York filed suit July 2004 against six power companies in 20 states contending that their annual release of 650 millions tons of carbon dioxide is a public nuisance. The case was dismissed in September 2005 and is now on appeal. The case is *State of Connecticut et. al. v. American Electric Power Company, Inc. et. al.*, U.S. Court of Appeals, Second District, no. 05-5104cv.

- A suit before the Supreme Court over whether EPA is required to regulate carbon dioxide emissions under the Clean Air Act pits 12 states against the EPA. Eleven states with vital energy and auto making interests have sided with EPA. EPA's denied a petition, filed by several environmental groups in 1999. The environmental groups had asked that regulatory standards be set for carbon-dioxide emissions from cars and power plants. Massachusetts, California, Connecticut, Illinois, Maine, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington filed suit in the United States Circuit Court for the District of Columbia seeking an order to force EPA to set the standards. Michigan, Texas, Idaho, North Dakota, Utah, South Dakota, Alaska, Kansas, Nebraska, and Ohio then intervened on EPA's side. The case (*Massachusetts et. al. Petitioners v. United States Environmental Protection Agency*, Respondent, U.S. Supreme Court, no. 05-1120) will be heard this fall.

- North Carolina is directly attacking the federal government in the form of the Tennessee Valley Authority, which produces electricity for Tennessee, Alabama and Kentucky. North Carolina Attorney General Roy Cooper is seeking a court order to require the Tennessee Valley Authority to lower its emissions to levels required for power plants in North Carolina under the North Carolina Clean Smokestacks Act (*State of North Carolina v. Tennessee Valley Authority*, U.S. District Court for the Western District of North Carolina, Asheville Division, no. 06-cv-00020). TVA is a federally owned corporation based in Knoxville. It operates power plants in Tennessee, Alabama, and Kentucky. Cooper says the pollution is a public nuisance because it causes more than 15,000 illnesses in North Carolina annually. A New York Times editorial on March 4, 2006, said the situation was a result of Bush's relaxation of air pollution enforcement. "Mr. Cooper called the public lawsuit a 'last resort' arising from the administration's weakening of longstanding regulatory tools that had been used to make individual plants clean up their emissions," according to the editorial.

Close Window

## Muzzle doesn't fit river panel liaison Suit puts Fite, Oklahoma AG at odds

BY ROBERT J. SMITH ARKANSAS DEMOCRAT-GAZETTE

Ed Fite's cordial, chatty friendships with Arkansas water quality officials go over like a ton of bricks with the Oklahoma attorney general's office.

It's been that way since 2002, when Oklahoma Attorney General Drew Edmondson first ordered the Oklahoma Scenic Rivers Commission administrator to "stand down" and stop communicating with Northwest Arkansas representatives.

The commission, based in Tahlequah, is a state agency formed in 1977. Its emphasis is to protect the "aesthetic, scenic, historic, archaeological and scientific features of the Illinois River and its tributaries," according to its Web site.

As the commission's administrator, Fite sees no harm in praising his Arkansas neighbors for steps intended to improve water quality. And he thinks it's constructive if he can offer officials in Arkansas advice on water quality issues or help smooth out differences they might have with officials in Oklahoma. "The way I was raised by my parents is when someone does something good, you praise them openly," Fite said. "When someone does something terrible, you criticize them in private."

Edmondson, who for years has battled Arkansas cities, businesses and state agencies over water quality issues, believes Fite's dealings with Arkansas officials potentially undercut Oklahoma's position in federal court.

Edmondson filed a federal lawsuit in 2005 against eight companies with poultry operations in Arkansas. The suit accuses the companies of polluting the Illinois River watershed with poultry litter.

So every time Fite presents a Northwest Arkansas city with a certificate of honor from the Scenic Rivers Commission for upgrading a sewer plant, Edmondson and his staff fume.

Equally frowned upon is his regular communication with Arkansas poultry industry representatives he's gotten to know during 23 years directing the commission.

"You don't want someone purporting to speak for the state undercutting your position," Edmondson said in a Sept. 1 interview. "Ed Fite was in conversations that I wasn't privy to. I don't know what was being said, and I simply could not have that."

"When you are in litigation, the attorney general is in charge no matter what other agencies are involved, including the governor." FITE'S

### FINE LINE

Fite walks a fine line, he said, when trying to represent the commission while honoring the directives of state leaders. Not only did Edmondson ask him to "stand down" in 2002 when it came to talks with Arkansas officials, but Gov. Brad Henry issued a directive to all Oklahoma state agencies in 2005 telling them to be supportive of the state's lawsuit against the poultry companies.

Fite, a state employee hired by the commission, said he's adhered to the wishes of the governor and attorney general, but it's been frustrating.

Recent verbal volleys between Edmondson's office and the Oklahoma Scenic Rivers Commission over the handling of the water-quality dispute with Arkansas reflect the long-running tension between Edmondson, Fite and the commission.

Last month, Scenic Rivers Commission Chairman Bill Blackard discussed bringing a resolution before the commissioners requesting that Edmondson dismiss the lawsuit against the poultry companies.

Blackard, however, dropped the resolution proposal at a meeting on Aug. 29, in part, he said, because he didn't want to put Fite in a difficult position with Edmondson and Henry.

Edmondson didn't speak publicly against the resolution, but said "commissioners who sign on will look rather foolish when we present our evidence at trial."

Edmondson acknowledged that Fite is in a difficult position.

"I think he feels very strongly about the river and protecting it, but there are members of his board, including his chairman, who aren't supportive of this litigation," Edmondson said in the Sept. 1 interview. "And Ed works for the commission, but he also works for Oklahoma."

### THE DEPOSITIONS

Conflicts between Fite and Edmondson's office over how Fite interacts with officials in Arkansas are apparent in depositions taken for two lawsuits unrelated to Edmondson's suit against the Arkansas poultry companies.

Marie West sued Edmondson and assistants in his office in 2003 in Oklahoma and federal courts. West worked nine months as an assistant attorney general assigned to the Scenic Rivers Commission, the Oklahoma Conservation Commission and 88 conservation districts.

West provided the Arkansas Democrat-Gazette with copies of 10 depositions taken in her cases. Most center on her allegation that her supervisor harassed and intimidated her, but some shed light on Oklahoma's negotiations with Arkansas cities and poultry companies.

West was expected to take documents from state agencies without telling the agencies, according to her lawsuits, and was asked to spy on the state agencies she advised.

The attorney general's office distrusted the leaders of the agencies, West said. Edmondson didn't like communication between

Oklahoma agencies and Arkansas state agencies about river pollution that didn't include his office, she said.

"I was told to always divide and conquer the state agencies so they don't thwart your power," West said in an Aug. 9 interview in Tulsa. "The agencies trusted me to represent them and look out for their best interests. When I didn't toe the company line, divide and conquer, and do what the attorney general wanted, that's when I [left]."

The attorney general's office denies West's claims. Edmondson said West isn't being truthful.

"We don't spy on agencies," Edmondson said Sept. 1.

## DINNER DISCUSSION

West said an example of how the attorney general's office created friction between state agencies played out over dinner at Chelino's restaurant in Oklahoma City in spring 2002.

Kelly Hunter Burch, head of Edmondson's environmental protection unit, told Fite that Oklahoma Water Resources Board Director Duane Smith didn't respect Fite's work and that Fite wasn't well-liked by some employees of the Oklahoma Water Resource Board, West said.

"I remember being deflated, and it went all over me," Fite said. "I gave a lot of credit to things Kelly would tell me back then."

Burch on Friday declined to comment, said Charlie Price, a spokesman for Edmondson's office. Smith also declined to comment.

Fite said he's never asked Smith whether Burch's words were true.

"It doesn't matter whether he said it or didn't say it," Fite said. "The fact is Kelly made me feel terrible that night."

It was later that year, in July or August, that Edmondson asked Fite to "stand down" when it came to his interactions with Arkansas officials, Fite said in a Jan. 20, 2005, deposition for West's lawsuits. Fite immediately was concerned about the request.

"I wasn't trying to be bellicosity toward his decision as the attorney general," Fite said in the deposition. "I was concerned because I had become, through just the years of involvement with the different cities and the principals and the Illinois River basin in particular when I had jurisdiction, as the known person that knew what was going on in the basin, so that's who the folks would come talk to."

Edmondson said he was concerned about Oklahoma having a consistent message with Arkansas poultry companies and the Northwest Arkansas cities that Oklahoma says are polluting the Illinois River.

"At some point, somewhere in there in 2002, we did have a meeting, maybe more than one, to make it very clear that we were in negotiations with the poultry industry and it was important to speak as one voice," Edmondson said in a Sept. 1 interview. "And, that we not have sidebar negotiations with different agencies talking to the different companies."

Fite continued to communicate with Arkansas officials.

He was among the contingent of Oklahoma officials who met in Fayetteville with Arkansas state officials, Northwest Arkansas city officials and Arkansas poultry companies. The meetings, which lasted two days, started July 31, 2002.

Arkansas leaders pointed out that Fayetteville planned to spend \$125 million on sewer system improvements.

Burch, according to Fite's Jan. 20, 2005, deposition, referred to Fayetteville's plan as "a good start." That comment that didn't go over well with Arkansans.

"Some of the Arkansas representatives felt that they were kind of slighted because they felt they were expending a lot of effort," Fite said in his deposition. "And, so, they heard what they wanted to hear and they went back and they started being disgruntled."

Fite, on his own, tried to do damage control. He called Mary Leath, an assistant director with the Arkansas Department of Environmental Quality. He tried to convince Leath that Burch hadn't meant any offense by the comment.

Leath remembers how mad Burch's comment made her, but she didn't specifically remember Fite contacting her afterward.

"It was so lacking in seeing what the real impact of the commitment was of Arkansans," Leath said. "That set the tone even more for us that there was a very unreasonable approach on the Oklahoma side to this whole issue of improving water quality."

## HONORING CITIES

Fite, meanwhile, has maintained an involvement with water quality officials in Arkansas.

He attended city council meetings in Siloam Springs, Fayetteville and Springdale, where he recognized the cities for improving discharges from their sewer plants.

At the Fayetteville meeting on Jan. 3, Fite acknowledged that he was "probably the most despised individual in Fayetteville in the 1980s" because of the city's conflict with Oklahoma regarding sewer plant discharges.

In the 1980s, the states battled to the U.S. Supreme Court as Oklahoma challenged Fayetteville's plan to shift part of its sewer plant discharge into the Illinois River. Until then, the discharge went into the White River, which feeds Beaver Lake, Northwest Arkansas' main drinking water supply.

"It's hard to stand before this group and not be embarrassed about years in the past, but we have worked together since 1996," Fite told Fayetteville aldermen in January. "The city of Fayetteville has been nothing but a full partner, fully open, available to discuss our concerns and alternatives that have been suggested."

David Cameron, Siloam Springs city administrator, was grateful when Fite came to thank his city earlier this year for planned upgrades to its sewer plant. In 2005, Fite traveled with Siloam Springs officials to Washington to lobby congressional leaders for money for the sewer plant.

"He's the only reason I would see us being in any type of cordial relationship with Oklahoma," Cameron said. "When I think of Oklahoma, I think of Ed Fite."

Fite's friendliness didn't play well in Oklahoma City, depositions in West's lawsuits show.

Burch was asked during a deposition whether she was "upset" that Fite "continued to have negotiations."



"I don't know if 'upset' is the right word," Burch said in an Aug. 8, 2005, deposition. "It wasn't helpful."

Fite said he shares Edmondson's goal of protecting the state's scenic rivers, but he believes he can resolve differences by communicating with Arkansas officials even though there's an ongoing lawsuit against the poultry companies.

"We're trying to get our arms around a huge problem," Fite said. "If I had all the power in the world in Oklahoma and all the money in the world, if I can't get along with the state of Arkansas, I'll never be able to do my job."

Edmondson disagrees about the usefulness of conversations with people in Arkansas.

"I'm not sure Ed has caused any harm, but that's what we were trying to avoid," Edmondson said. "It's very important that you negotiate from a position of strength."

**This story was published Sunday, September 10, 2006**

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## Poultry firms offer litter plan

BRIAN BARBER AND BARBARA HOBEROCK World Staff Writers

09/10/2004

Tulsa World (Final Home Edition), Page A1 of News

### **The attorney general says the proposal from the five companies falls short.**

The poultry industry wants to voluntarily reduce the amount of chicken litter in Oklahoma's scenic river watersheds to avoid litigation with the state.

Five companies submitted a proposal Thursday to the Oklahoma Attorney General's Office outlining the steps they would take if it is approved, but not specifying any cash be paid for damages.

"We are very hopeful for a positive outcome," said Janet Wilkerson, who is acting as the spokeswoman for the companies, which include Tyson Foods, Peterson Farms, Simmons Foods, George's and Cargill.

"A negotiated agreement makes so much more sense for us and the state than spending more money on trial lawyers."

Oklahoma Attorney General Drew Edmondson said he found the proposal to be lacking.

It is the second draft of the proposal that Edmondson has received, but the first to be made public by the companies.

"If they continue their negotiations in the Governor's Office and in (newspaper) editorial boards instead of with the lawyers, it is going to end up in court. This is not a publicity campaign. This is an issue where our streams are dying," Edmondson said.

From the beginning of negotiations, Edmondson said, he has wanted the industry legally responsible for the complete removal of excess litter, and wanted it set out in an enforceable consent decree.

"And if they had agreed to that then, we wouldn't be talking about lawyers or talking about reclamation expenses, and we wouldn't be talking about litigation," he said. "But they have a history of pie-in-the-sky promises and zero performance."

Edmondson said his office is still willing to negotiate if the industry comes forth with a good-faith offer and settlement.

"At this point, it is going to cost them money, in addition to signing a document," he said. "We told them if they forced us to retain counsel that we were going to be talking about damages. And that is where we are today."

Edmondson said he wants the legal expenses the state has incurred to be paid by the industry, along with damages -- an amount he didn't know.

"They have done damage to Oklahoma's waterways," he said. "There are remedial steps that can be taken, but they are expensive. They have also done damage to Oklahoma's wildlife. They have literally choked the streams and lakes."

The companies have suggested a Sept. 30 sitdown meeting with Edmondson, and if they can't reach an agreement, they want the matter taken to mediation.

Last year, the companies settled a \$7.5 million lawsuit with the city of Tulsa over pollution in creeks and streams that feed two city reservoirs, Lake Spavinaw and Lake Eucha.

Most of the money went to pay the city's legal fees, but the settlement created measures to restrict further contamination from phosphorus-rich chicken litter.

Too much phosphorus in the waterways allows alga blooms to grow, depleting oxygen levels, choking aquatic life, damaging the aesthetic value and creating taste and odor problems in drinking water.

What the companies are proposing to the state goes further than the city settlement and would be a "landmark" achievement, said Wilkerson, noting that Edmondson has been vague about what he wants.

The negotiations were made public "so that everyone with a stake in, or an effect on, water quality will be aware of and support a voluntary, positive resolution," she said.

Among their proposed actions:

- Develop a scientifically based index relating to standards for land application of chicken litter and protection of water sources.
- Develop a new individual contract poultry grower management plan based on the index.
- Provide alternative uses for chicken litter, like energy or heat recovery, composting for export and processing into organic fertilizer.
- Provide a reduction of the amount of poultry litter application through an interim transportation measure that would remove more than 200,000 tons of litter from the watersheds over the next three years.
- Facilitate and fund numerous supplemental environmental projects.
- Create and fund a nonprofit entity that potentially could acquire and maintain conservation easements for buffer strips and other lands along streams.

- Document chicken litter management, including annual reports to the states of Oklahoma and Arkansas.

These actions would cost the companies millions of dollars annually, Wilkerson said.

"We would rather put our money toward a solution rather than fighting a lawsuit."

The waterways specified in the companies' proposal include Flint Creek, the Illinois River, Barren Fork Creek, the Upper Mountain Fork River, Big Lee's Creek, Little Lee's Creek and Tenkiller Ferry Lake.

It is important for people to realize that the poultry industry, which employs 12,000 in the state, is not solely responsible for the phosphorus in the watersheds, Wilkerson said.

Municipal point sources, nurseries, gravel-mining operations, golf courses, septic tank owners and cattle ranchers also are to blame, she said. Each should take some level of responsibility.

But Edmondson disagreed.

"It is our opinion, and it would be our evidence, that the largest contributing factor to the damage of those streams has been pollution from poultry," he said. "It is also the single most manageable source of that pollution."

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## Poultry firms on offensive again

BARBARA HOBEROCK World Capitol Bureau

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### **They are mailing letters to state lawmakers to explain their position in a water-quality dispute.**

OKLAHOMA CITY -- Poultry companies that are embroiled in a dispute with Oklahoma Attorney General Drew Edmondson over water quality are taking their message to lawmakers.

The companies said Wednesday that they are mailing letters explaining their side of the story to lawmakers and other officials.

Edmondson canceled planned negotiations last week after he learned that the companies had helped fund an Oklahoma Farm Bureau media campaign that is critical of the Attorney General's Office.

Edmondson wrote to the poultry industry's attorney, canceling talks that had been scheduled for Thursday and Friday, saying he expected the companies to "cease and desist your efforts to undermine this office and its effort to enforce the laws of the State of Oklahoma."

But Edmondson said his main concern was that the companies had not been responsive to issues raised in the negotiations.

"In my letter to the industry's lawyer, I put the ball in the companies' court," Edmondson said Wednesday regarding the mailing to lawmakers. "If they want to get serious, they know what they have to do. Letters like this are just window dressing."

At issue is excess phosphorus from chicken litter that ends up in waterways.

It causes algae blooms to grow, depleting oxygen levels, choking aquatic life and creating taste and odor problems in drinking water.

Many farmers who raise chickens use the chicken litter as fertilizer or sell it.

In the poultry companies' letter to lawmakers, spokeswoman Janet Wilkerson discusses other sources of pollution and efforts that the companies have made to improve water quality.

The companies have committed to removing a significant volume of litter produced in the scenic river watersheds until nutrient standards can be evaluated and changed if necessary, Wilkerson wrote.

"Let's face it; in a lawsuit of the scale the attorney general is threatening, only the lawyers stand to profit," she wrote.

The companies do not think that calling off the negotiations is the best solution, Wilkerson wrote.

Companies involved in the negotiations with Edmondson include Simmons Foods, Peterson Farms, George's Inc., Tyson Foods, OK Foods and Cargill.

Edmondson wants a consent decree requiring the industry to clean up watersheds and remove excess chicken litter from the land if it can't be applied safely as fertilizer. He has threatened litigation to address pollution concerns.

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# Poultry lawsuit ropes ranchers' concerns

## Bill to prevent manure regulation supported

By Chris Casteel, Washington Bureau

WASHINGTON — The nation's cattlemen, concerned about legal action taken in Oklahoma regarding poultry waste, are pushing a House committee to pass a bill that would prevent the regulation of animal manure under federal environmental laws.

But Oklahoma Attorney General Drew Edmondson said Friday ranchers have nothing to fear from his lawsuit against out-of-state poultry companies. He said federal law already includes exemptions for normal agricultural use of manure as fertilizer.

Edmondson contends in his federal lawsuit

that massive applications of chicken waste containing chemicals added to the feed is polluting water in eastern Oklahoma. The waste is generated by large poultry operations in that part of the state.

The National Cattlemen's Beef Association sent a letter this week to the chairman of the House Energy and Commerce Committee urging swift passage of a bill that would exempt manure from regulation under so-called Superfund laws.

The letter to Rep. Joe Barton, R-Texas, states, "Over the past couple of years, some state and local authorities have sought to extend (the Superfund laws) ... to our nation's

livestock operations for emissions or discharges from livestock manure. Such an interpretation of Superfund law is not supported by science or legislative history.

"Congress must now confirm that it never intended to regulate manure under (the federal laws), ... If lawsuits against livestock and poultry operations are successful in arguing that manure warrants Superfund action, we will essentially be outlawing the use of manure-based fertilizer in this country."

### Bill called unnecessary

Air Energy and Commerce subcommittee held a hearing on the bill last year, at which farm groups and an assistant Oklahoma attorney general testified.

In an interview Friday, Edmondson said the

bill is "unnecessary and ill-advised."

He said he could understand the concerns of cattlemen, but that their fears were being generated by misinformation from poultry interests.

"Nobody's looking at anybody but major poultry operations," Edmondson said.

Reps. Ernest Istook, R-Warr Acres, and Frank Lucas, R-Cleveland, are cosponsoring the House legislation by Rep. Ralph M. Hall, R-Texas, who said last year that the issue of using Superfund laws to sue over manure "absolutely threatens American agriculture."

A spokesman for the Energy and Commerce Committee could not be reached for comment Friday. The House is expected to recess Friday until after the November elections, and there may not be time next week for lawmakers to take up the legislation.